

**STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF LABOR**  
**CONCORD, NEW HAMPSHIRE**



V

**Mountain Fire Pizza LLC**

**DECISION OF THE HEARING OFFICER**

**Nature of Dispute:** RSA 275:43 I unpaid wages  
RSA 275:48 I illegal deductions  
RSA 279:26-b tip pooling and sharing

**Employer:** Mountain Fire Pizza LLC, 245 Main St, Gorham, NH 03581

**Date of Hearing:** September 15, 2015

**Case No.:** 50704

**BACKGROUND AND STATEMENT OF THE ISSUES**

The claimant asserts she is owed \$2,672.04 in unpaid wages because the employer illegally required her to participate in a tip pooling arrangement. Pursuant to this arrangement, the employer illegally deducted \$2,672.04 from her wages in the form of tips to the host/hostess position.

The employer disagreed that the tip pooling arrangement was mandatory. He brought up the idea at a meeting and believed that all of the wait staff were in agreement with the arrangement.

**FINDINGS OF FACT**

The claimant worked for the employer from June 10, 2013, when the business opened, until June 4, 2015. The employer hired her as a server, though she did cover at least one shift as a hostess only.

The employer opened on June 10, 2013. He quickly realized that a host position was necessary because the servers could not seat, wait on table, clear the tables and take payments, in a timely manner. He created a host position and notified the wait staff they would be giving 12% of their tips to the host for their assistance with customers. He memorialized this mandatory tip pooling arrangement in writing.

The claimant provided credible testimony that the wait staff was very unhappy about the arrangement, but believed the employer knew the laws and that it must be legal. She did not learn until later that this practice was not legal.

The employer's argument that he believed all the employees agreed to the tip pooling/sharing arrangement, is not persuasive. He presented the tip pooling/sharing arrangement to the employees, requiring 12% of their tips to be given to the host

position. For at least one employee, he told them to tip out pursuant to the policy, when they did not want to.

The claimant previously presented notes which appear to have been kept contemporaneously, showing the dates she worked and the tips she distributed to the host, totaling \$2,672.04.

The Hearing Officer finds the claimant proved by a preponderance of the evidence the employer mandated a tip pooling/sharing policy in contravention of RSA 279:26-b. She also proved the employer illegally deducted \$2,672.04 from her wages as a result of the mandatory tip pooling/sharing arrangement.

### **DISCUSSION**

The claimant has the burden of proof in these matters to provide proof by a preponderance of evidence that her assertions are true.

Pursuant to Lab 202.05 "Proof by a preponderance of evidence" means a demonstration by admissible evidence that a fact or legal conclusion is more probable than not.

The Hearing Officer finds the claimant met her burden in this claim.

### **DECISION AND ORDER**

Based on the testimony and evidence presented, as RSA 275:43 I requires that an employer pay all wages due an employee, and as this Department finds that the claimant proved by a preponderance of the evidence that she is owed the claimed wages, it is hereby ruled that the Wage Claim is valid in the amount of \$2,672.04.

The employer is hereby ordered to send a check to this Department, payable to [REDACTED], in the total of \$2,672.04, less any applicable taxes, within 20 days of the date of this Order.

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Melissa J. Delorey  
Hearing Officer

Date of Decision: September 25, 2015

MJD/kdc